

Guidance on transfer arrangements associated to the Music Hub Investment Programme

Arts Council England



First Published 21 July 2023
Updated: 8 February 2024

Supported using public funding by



**ARTS COUNCIL
ENGLAND**

Introduction

This guidance relates to the potential transfer arrangements of employees and assets as an outcome of the Music Hub Investment Programme. It contains information about:

- what current Music Education Hub Lead Organisations and their partners can do now;
- what we are advising applicants to consider doing if they are applying to the Music Hub Investment Programme; and
- actions that may need to be taken once new Hub Lead Organisations are announced, which is anticipated to be in April 2024.

Please note, this document does not constitute legal advice and does not confirm whether the transfer of staff and/or assets will apply to your organisation. Arts Council England makes no representations or warranties in this regard and do not accept any liability with regard to the use of the contents of this guidance. Your organisation may wish to take its own independent legal advice before forming a view on these matters.

If you have any questions, please contact cfprojects@artscouncil.org.uk.

Definitions

- **Music Hubs** – Music Hubs are partnerships of organisations, that work together to deliver a high-quality music education offer to children and young people across a defined geographical area.

- **Hub Lead Organisation (HLO)** – the HLO is the organisation responsible for receiving grant funding to help coordinate and support the delivery of music education provision through a Music Hub partnership. HLOs are responsible for ensuring this delivery is in line with the Department for Education’s aims for Music Hubs, as set out in ‘The power of music to change lives: a national plan for music education’ (NPME). It is not their responsibility to directly deliver the activities and services of the Music Hub.
- **TUPE** – stands for ‘Transfer of Undertakings (Protection of Employment) Regulations 2006’ and its amendment in 2014. TUPE aims to protect employees when the organisation employing them ceases to provide the service provision to a company or organisation, but the service provision, which will have the same or very similar specification, is to be provided by another company or organisation.
- **Capital assets** – by this we mean any asset (or multiple assets) that are purchased, renovated, created, improved, or equipped using more than £1,000 of the grant in any single transaction. Any capital assets purchased within the last five years should be clearly recorded and agreement sought from the Arts Council before disposing of, selling or transferring these assets. These capital assets are potentially in scope for transfer during the Music Education Investment Process. Any assets which are more than five years old at the point of transfer or were purchased, renovated or created with funds other than the Hub grant are not in scope.
- **Knowledge transfer** – our standard terms and conditions describe the knowledge and assets that could be transferred from a current HLO to a new HLO as “knowledge, skills, documentation, materials and procedures, developed with the grant”. This could include things such as programme evaluations and needs analyses and intellectual property developed solely with the Music Education Hub grant.

Background

Arts Council England published its **Guidance for Applicants** (<https://www.artscouncil.org.uk/our-open-funds/music-hub-investment/music-hub-investment-programme-making-your-application>) to the Music Hub Investment Programme on 14 June 2023. In this guidance, we provided information about the transfer arrangements that prospective HLOs should consider when making an application to lead a Music Hub. This includes the possible transfer of staff and/or capital assets from one organisation to another where a service provision change is proposed or expected to take place as an outcome of the Investment Programme.

Our Standard Terms and Conditions for Music Education Hubs 2023-24 (<https://www.artscouncil.org.uk/MusicEducationHubs/Guidance>), published 14 June 2023, also set out requirements for current HLOs, including the management of capital assets.

In our Guidance for Applicants, we have encouraged prospective applicants to engage with current HLOs and their partners to carry out appropriate due diligence that enables them to determine how workforce arrangements and asset transfer can best be managed if their application is successful.

In preparation for the Music Hub Investment Programme, current HLOs were asked to submit anonymised employee information relating to the strategic and administrative functions of their Music Education Hub. We are grateful to those HLOs that responded to our requests for anonymised employee information, as this has helped us and the Department for Education to understand and assess the potential implications associated to TUPE within the context of the Music Hub Investment Programme.

This assessment is now complete and we are taking steps to delete the detailed employee information that we received, to ensure we are minimising the data we hold. As outlined in our Guidance for Applicants, we have signposted applicants to workforce information published through the Music Education Hub data dashboard and have encouraged them to contact current HLOs to discuss potential workforce and/or transfer arrangements.

TUPE considerations

HLOs are expected to work with and fund partner organisations and/or individuals to help deliver the Music Hub's activities and services. This may include working with organisations and individuals that are already functioning and operating within the Music Hub area, or commissioning new partnership arrangements where gaps in provision or expertise need to be addressed.

In some instances, HLOs may also want to (continue to) directly deliver some or all of the Music Hub's activities and services. In all of these scenarios, HLOs will need to be considerate of the potential implications for TUPE, especially where the strategic and administrative functions of the HLO have been transferred from one organisation to another and/or the activities or service provision offered by the Music Hub is being transferred from one organisation to another, as directed by the appointed HLO.

Current HLOs are not under any legal or contractual obligation to engage with or share information about their current workforce or partnership arrangements with prospective applicants (legal obligation will arise once funding has been committed to a new HLO, and in the event of TUPE applying). However, we encourage openness and information sharing

between all parties – helping to support and shape the future arrangements for music education in your area. A culture of partnership working and collaboration will benefit all parties, especially where the outcome of the prospective applicant’s proposal could have a direct impact on your organisation’s current (and future) workforce and operational arrangements.

As a guide, you might want to consider sharing the following kind of information with prospective applicants:

- additional and/or more up to date information about your Music Education Hub’s current workforce arrangements, over and above what has been published through the data dashboard. This could include some or all of the information collected through the anonymised employee information request, including job roles (and associated costs and pensions information) for those employees you considered to be in scope for TUPE
- additional information about your own organisation’s delivery arrangements and how these could be retained or incorporated into the operating structure for the new Music Hub.

If applicants cannot obtain appropriate or accurate information from the incumbent lead organisation(s), then they should provide appropriate workforce and/or budgetary assumptions within their application based on the size and scale of the Hub area, including (but not limited to) how risks and mitigations will be managed in the absence of detailed information.

Capital asset considerations

Any capital asset/s purchased within the last five years using more than £1,000 of the grant in any single transaction are potentially in scope for transfer to a new HLO, if there is a change of leadership as an outcome of the Music Hub Investment Programme. This could include items such as instrument stock, IT or office equipment.

It also applies to items that were renovated, created, improved, or equipped using more than £1,000 of the grant in any single transaction within this period. Any assets which are more than five years old at the point of transfer or were purchased with funds other than the Hub grant are not in scope.

Capital assets meeting these criteria must be recorded in a register which details (as a minimum):

- the date the item was purchased
- the price paid
- date due to be disposed (if applicable)
- the date of our written permission (if applicable)
- the date of disposal (if applicable)
- the value of the disposal (if applicable)

In many cases (and at the Arts Council's sole discretion) it will be appropriate to transfer the ownership of these capital assets to a new HLO, if there is a change in leadership as an outcome of the Music Hub Investment Programme.

You may want to consider discussing the coordination, maintenance and storage of capital assets, and any other practical considerations, with prospective applicants – or with current HLOs (and their relevant partners, if applicable) if you are planning to apply to lead a Music Hub as part of the Music

Hub Investment Programme – as a transfer of ownership may not require the asset to be physically transferred depending on the arrangements for storage, usage and maintenance agreed between the prospective HLO and the incumbent asset owner.

As a reminder, agreement must be sought from the Arts Council in writing before disposing of, selling or transferring capital assets that meet the criteria outlined above.

Please note that the funding agreement and its terms and conditions remain in force even once the final payment has been made. The terms of the 2023-24 Music Education Hub funding agreement apply for the maximum period required under the grant for asset disposal (as set out in **our standard terms and conditions** (<https://www.artscouncil.org.uk/MusicEducationHubs/Guidance>)) ie five years / till 31 August 2029 or for as long as you do not carry out any of the terms and conditions of the Funding Agreement or any breach of them continues (this includes any outstanding reporting on grant expenditure or the delivery of the Agreed Activity).

Therefore, any capital assets which are discovered after 1 August 2024 should still be declared to the Arts Council and passed to the new HLO as appropriate. As per the **standard terms and conditions** (<https://www.artscouncil.org.uk/MusicEducationHubs/Guidance>), all main financial records including profit and loss accounts, management statements, personnel and payroll records for staff funded under the Funding Agreement must be retained for seven years after the grant has ended.

Knowledge transfer

The Music Hub programme is founded upon the principles of collaboration and partnership working, ensuring the best possible opportunities and outcomes for children and young people are achieved. Organisations will want to make the very most of knowledge, resources and learning generated by the programme to date.

Therefore, to help facilitate this process – and once decision announcements are made in relation to the Music Hub Investment Programme – you will need to (at your cost and for no/ at nil consideration), work collaboratively with Hub partners and HLOs to share knowledge, documentation, materials and procedures that have been previously developed with the grant. This could be done through meetings with the new HLO, and/or via written documents, agreements and handover notes. Arts Council England may also provide new HLOs with appropriate documentation from current programme to support and enable an effective transition. This may include copies of relevant Local Plans for Music Education.

Financial reserves generated by music education activity

As per the **standard terms and conditions** (<https://www.artscouncil.org.uk/MusicEducationHubs/Guidance>) you must ringfence **any income generated by activity funded through the grant**, and retain these within a restricted fund under the description of 'Arts Council Funding'. This income can only be used for the purposes of music education activity. Where income is carried forward beyond the financial year it is generated these reserves should be included in your financial templates.

As part of your payment submissions, our Relationship Managers will review all completed financial templates for evidence of financial reserves generated by activity funded through the grant. We require you to provide a suitable plan (within your management accounts and SMART objectives/other documents) for spending these reserves on music education activity. By 'music education activity', we mean both direct delivery costs and/or strategic or administrative costs associated with the coordination and leadership of music education activity, including (but not limited to):

- needs analysis
- data collection and evaluation
- relevant overheads (related to delivery and/or leadership or management of music education activity)
- staff/workforce development and /or training
- activity which supports transition to the new Hub Music Programme.

Your Relationship Manager will review and agree the appropriateness of these costs on a case-by-case basis.

If you are continuing to be a HLO from 1 September 2024, we require you to carry over reserves generated by activity funded through the 2023/24 grant into the budget template for 2024/25.

If you are ceasing to be a HLO from 1 September 2024, we may require additional information regarding how reserves **generated by activity funded through the 2023-24 grant** will be ringfenced for the purposes of music education activity after 31 August 2024. In some cases, the current HLO and the future HLO may decide that this income may be better protected for the purposes of music education by transferring it all or in part to the new HLO. Current HLOs will want to be having open discussions with relevant stakeholders and partners regarding

best management of these reserves. The aim should be to maximise financial sustainability of the new Music Hub partnership covering their respective area and the new Music Hub programme as a whole

Note that any underspends of the Music Education Hub 2023-24 grant must be returned to the DfE via the Arts Council. Please notify the Arts Council as soon as you can (in advance where possible) if you think you will not spend your grant in full by 31 August 2024.

If you are appointed as a HLO from 1 September 2024

If you are made a conditional offer to become a HLO from 1 September 2024, you will need to ensure you have considered and met all relevant conditions relating to the transfer of employees and/or capital assets before you are issued with a Funding Agreement. This may include having evidence for how transfer arrangements will be managed between you and the other relevant organisation(s), where applicable.

The precise arrangements (and funding conditions) will be subject to the partnership model and the governance and management arrangements you intend to put in place, as outlined in your application for funding.

If you are ceasing to be a HLO from 1 September 2024

If you are ceasing to be a HLO from 1 September 2024 – by this, we mean you are no longer the named HLO on a funding agreement with the Arts Council for one of the 43 Music Hubs – there will be actions you need to take (as per the requirements of the 2023-24 funding agreement).

As part of your 1 August payment submission, you must:

- complete an annual data survey template.
- provide written confirmation (an email will suffice) from the new HLO that they have received your completed annual data survey template alongside an agreed plan or agreement for knowledge, data and asset transfer, if applicable.

In carrying out the actions above, you must ensure that you and the new HLO have in mind and at all times act in accordance with the requirements of all relevant and applicable data protection legislation, in particular and not limited to legislation that regulate the collection, processing and privacy of personal data.

The Arts Council acknowledges that some current HLOs may need more time to complete the annual data survey template. So, whilst the payment condition is set for 1 August 2024, you will be given until 30 September 2024 to complete this task. The payment cannot be requested or released until this condition has been met.

Annual survey templates can be found on our **website** (<https://www.artscouncil.org.uk/MusicEducationHubs/music-education-hubs-survey-and-data#t-in-page-nav-1>). Current HLOs will be provided with an updated version of the 2023-24 annual data survey template in early 2024.

In the event of a TUPE transfer taking place between your organisation and a newly-appointed HLO, you must ensure your organisation complies with TUPE regulations, which includes informing and consulting with any staff members affected by the transfer arrangements and ensuring you provide employer liability information to the new HLO (or other incoming employer) in good time (ie. not less than 28 days from the date of transfer).

It is the responsibility of your organisation to ensure it properly fulfils its legal duties in relation to TUPE, where applicable.